

MINUTE ORDER

ALI ET AL V. KHAN ET AL, 08cv02114 (NGG)

This order addresses the letter motion to dismiss filed by defendants (ct. doc. 31) which was discussed at a conference on September 3, 2009. The motion is granted in part and denied in part.

As a preliminary matter, I note that even though the application is framed as a motion to dismiss, I will address it in the first instance since it concerns discovery supervised by me. The motion is essentially one for sanctions under Rule 37(b)(2) for failure to comply with a discovery order, a "non-dispositive pretrial matter[]" referred to me pursuant to Local Civil Court Rule 72.2(a). Dismissal is simply one of the available sanctions enumerated under Rule 37(b)(2) that a court may impose for failure to comply with discovery requests or an order. Were I to determine that the sanction of dismissal is appropriate, then I would so recommend to District Judge Garaufis.

As discussed at the conference, the motion is granted as to the x-ray sought by defendants. Plaintiffs must deliver the x-ray to defendants by 9/8/09, which defendants will arrange to have copied and return to plaintiffs.

The motion is denied as to the employment records at Delta since they are in the control of a non-party. However, the parties must promptly attempt to clarify and resolve the dispute. If Delta refuses to comply, the parties must send a warning letter by 9/18/09 to Delta of their intentions to enforce the subpoenas for the records sought. Any application to compel compliance with the subpoena must be made by 9/28/09 if there is no appropriate response.

SO ORDERED.

Dated: Brooklyn, New York
 September 3, 2009

/s/ _____
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE